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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/905,698	07/10/2001	Richard R. Dickson	00-714	6169
719	7590	11/15/2004	EXAMINER	
CATERPILLAR INC. 100 N.E. ADAMS STREET PATENT DEPT. PEORIA, IL 616296490			FAYYAZ, NASHMIYA SAQIB	
			ART UNIT	PAPER NUMBER
			2856	

DATE MAILED: 11/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/905,698	DICKSON ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Nashmiya S. Fayyaz	2856	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 September 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, it is unclear how it is recited that a "constant mass flow stream" is "connected to the inlet..." since a "variable mass flow stream" is recited as "connected and summed with the constant mass flow stream". Therefore, it would appear that since the variable mass flow stream is summed with the constant mass flow stream, it is no longer accurate to indicate that the *inlet* to the partial flow dilution tunnel is connected to a **constant** mass flow stream. Further, in claim 3, it is indicated that the variable flow stream is connected "in parallel with" the constant flow stream which appears to be incorrect since they are recited as "summed" in claim 1 which would not be the case if they were in parallel. In claim 6, on line 4, "the flow of intake air" lacks antecedent basis.

### ***Claim Rejections - 35 USC § 103***

2. Claims 1, 2 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendren et al (PG Pub# US2003/0136177). As to claim 1, as best understood, Hendren et al disclose an emission sampling apparatus including a dilution tunnel 20 with inlet 17 with a sampling system 70,72,74, exhaust 11 of engine 12, flow control valve 28, second mass flow controller 36, filter 34 with a dilution air control arrangement 42/50 having a constant mass stream via fixed flow rate pump 29 and a variable flow stream "connected with" and "summed with" the constant stream via

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variably controlled solenoid valve 28, see figs 1-2. Further, it is noted that a mass flow controller, per se is not designated by Hendren et al. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to have designated the computer controlled solenoid valve 28 as a mass flow controller as it performs the function of controlling the flowrate. As to claim 2, usage of a critical flow venturi is old and well-known for flowrate control. Therefore, the inclusion of a venturi in addition to valve 28 is considered to have been a matter of design choice obvious to one of ordinary skill in the art at the time of the invention for the additional control of the flowrate. As to claim 9, note LFE 40 at the air intake of engine 12.

3. Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendren et al in view of Kono- U.S. Patent # 4,067,300. As to claim 10, Hendren et al do not elaborate on the type of laminar flow measurement used in the LFE 40.

However, in a related prior art device, Kono discloses using the pressure differential at the intake port of the engine which is generated in a laminar flow meter, see col. 4, lines 46 et seq. Therefore, usage of a pressure differential measurement with laminar flow element is considered to have been a matter design choice obvious to one of ordinary skill in the art at the time of the invention in view of the teaching by Kono as a known expediency for measuring the air intake flowrate . As to claims 11-13, usage of a selectable gain circuit to provide the "computer control" provided to the LFE is considered to have been a matter of design choice obvious to one of ordinary skill in the art at the time of the invention. Also the computer would have obviously 1 or more channel inputs or course settings.

### ***Double Patenting***

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-13 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 14-52 of copending Application No. 10/692871. Although the conflicting claims are not identical, they are not patentably distinct from each other because all the limitations of claims 14 and 34 of application # 10/692871 are found in the present application, **as it is now amended**.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

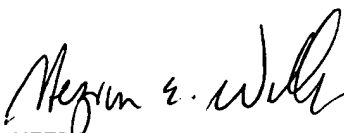
6. Applicant's arguments with respect to claims 1-13 have been considered but are moot in view of the new ground(s) of rejection.

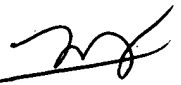
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nashmiya S. Fayyaz whose telephone number is 571-272-2192. The examiner can normally be reached on Mondays and Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron E. Williams can be reached on 571-272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
HEZRON WILLIAMS  
SUPERVISORY PATENT EXAMINER  
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NFayyaz  
Examiner  
Art Unit 2856

nf  
11/10/04